Final Rule on

Nondisplacement of Qualified Workers

Under Service Contracts

New Nondisplacement Rule
FAC 2005-64
effective 18 Jan 2013

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Overview

- Applicability and purpose
- Exemptions
- Waivers
- Responsibilities

Applicability/Purpose

- FAC 2005-64- published 21 December 2012
- Effective- 18 January 2013
- Policy: When a service contract succeeds a contract for performance of the same or similar services, at the same location, the successor contractor and its subcontractors are required to offer those service employees that are employed under the predecessor contract, and whose employment will be terminated as a result of award of the successor contract, a right of first refusal of employment under the contract in positions for which they are qualified

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Applicability/Purpose

- Applies to all solicitations for services at or above SAT issued on or after 18 Jan 2013.

- Existing contracts: COs are “expected” to work with their existing service contractors and bilaterally modify their contracts, to the extent feasible, to include the clause at FAR 52.222-17, or reach agreement with existing service contractors to:
  1) Inform existing workforce of their right of first refusal And
  2) Provide the list of service employees to CO no less than 30 days before contract completion

Exemptions

Exemptions (FAR 22.1203-2):

- Below Simplified Acquisition Threshold
- Committee for Purchase from People who are Blind or Severely Handicapped
- Sheltered Workshops - Guard, elevator operator, messenger or custodial contracts employing the severely handicapped
- Vending facilities under Randolph Sheppard Act
- Service Employees hired to work under Federal service contract and one or more nonfederal contracts as part of single job
  - ***Means that employees that work on both federal and nonfederal contracts are not protected (see also 22.1203-5(a)(1))***

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Waivers

FAR 22.1203-3

Senior Procurement Executive of procuring activity may waive some or all of the provisions, **IF:**

- Application would not serve the purpose of EO or would impair the ability to procure services on economical and efficient basis (at contract, subcontract, PO or class of service)
- Requires written analysis and completed by solicitation date
- Notification to workers and bargaining agents, NLT 5 days after solicitation issue date
- Notification to Department of Labor, NLT 5 days after solicitation issue date

Responsibilities- Contracting Officer

- Include clause 52.222-17 in services solicitation/contracts
  - (1) Service contracts as defined by 22.001
  - (2) Will succeed contracts for performance of same or similar work at the same location
  - (3) And that are not exempted or waived
- Must provide certified service employee list to successor contractor (employees, authorized representative) upon receipt but not before contract award
- Direct predecessor contractor to notify (written) employees of
- possible right to an offer of employment
  - Posted in conspicuous place, OR
  - Delivered individually to employee
- CO may withhold/suspend payments if contractor fails to deliver list at discretion, or at direction of DOL

Responsibilities- Predecessor

Prime and Sub:

- Not less than 30 days prior to completion of the contract provide CO :
  - Certified List with names, anniversary dates of service employees
  - If changes-revised list no later than 10 days prior to performance completion
- Written notice to employees of potential right of employment not less than 30 days prior to completion
  - Posted in conspicuous location in language of employees
  - Or delivered to each individual employee. If by email, confirmation of receipt is necessary.

Responsibilities- Successor

Prime and Sub:

- May employ fewer service employees than predecessor (reduced staffing)
  - Obligation to offer employment to predecessor contractor employees continues 90 days after start of performance

- May employ any of its current service employees, provided
  - Must have worked for contractor in the preceding 3 mos
  - Would otherwise face layoffs
  - Not required to displace its own workforce in favor of predecessor

*****Successor contractor bears responsibility of demonstrating appropriateness of claiming exception**

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Responsibilities- Successor

Prime and Sub:

- Right of First Refusal for vacancies of successor contractor
  - No requirement to offer same job, employment terms and conditions, pay or benefits
  - Must be qualified
  - Employee has minimum 10 day response to offer

- **Not** required to offer employment if employee will be retained by predecessor contractor, **or** service employee has failed to perform suitably

*****Burden of proof rests on successor**

Responsibilities- DoL

Department of Labor:

- Enforcement and investigation of complaints
  - Complaints may be emailed to: displaced@dol.gov
- May direct withholding upon finding of noncompliance
- May disbar or suspend as appropriate
- Or prescribe other remedies
- Fact sheet available at: http://www.dol.gov/whd/regs/compliance/whdfs67a.pdf